

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

April 27, 2009

No. 08-11074

Charles R. Fulbruge III
Clerk

BILLY J MULLINS JR; FARAWAY ENTERPRISES

Plaintiffs-Appellants-Cross-Appellees

v.

TESTAMERICA INC; SAGAPONACK PARTNERS LP

Defendants-Appellees-Cross-Appellants

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:02-CV-106

Before KING, HIGGINBOTHAM, and WIENER, Circuit Judges.

PER CURIAM:*

In view of this court's decision to vacate the district court's judgment on Plaintiff Faraway Enterprises' breach of contract and other claims, *see Mullins v. TestAmerica Inc.*, No. 08-11224, --- F.3d ----, 2009 WL 807458, at *30 (5th Cir. Mar. 30, 2009), the district court's memorandum opinion and order on attorney's fees entered on October 8, 2008 is hereby vacated. This case is remanded to the district court for such further proceedings as may be appropriate. Each party shall bear its own costs.

VACATED and REMANDED.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.